

Report to the Cabinet

Report reference: C-016-2020/21

Date of meeting: 20 July 2020



**Epping Forest
District Council**

Portfolio: Commercial and Regulatory Services

Subject: Business and Planning Bill grant of Pavement Licences

Responsible Officer: Qasim (Kim) Durrani (01992 564055).

Democratic Services: Adrian Hendry (01992 564246).

Recommendations:

(1) To note that the Business and Planning Bill is at Committee Stage in the House of Lords and is likely to get Royal Assent this month and that the Council should have a process in place to determine licensing applications made under the Act;

(2) That in order to achieve the tight timelines for determination of Licence Applications under the new Act agree:

(a) To amend the Scheme of Delegation and add decision making authority to the role of Director of Contract and Technical Service / Director of Commercial and Regulatory Services in respect of applications that do not receive any objections and those that do receive objections the Portfolio Holder for Commercial and Regulatory Services or the Leader of the Council be consulted as well as the Chair or Vice Chair of the Licensing Committee before a decision can be made,

(b) That Consultations on licence applications be carried out by electronic and digital means only,

(c) That Licence fee will be to be set out in Resource Implication section of the report,

(d) That the licence period shall be the maximum permissible under the Act currently likely to be up to September 2021,

(e) That Licensing Conditions attached at appendix-1 are adopted

Executive Summary:

The Parliament is considering fast-track process for Business and Planning Bill that is currently at second reading stage in the House of Lords. The reason for this is to ensure the Bill achieves Royal Assent before Parliaments summer recess.

The Bill is intended to assist businesses in recovery from impacts of Covid-19. Measures include ability for bars, pubs and restaurants that have on site alcohol licences to be able to sell off site and allow these premises the flexibility to seek licences for outdoor seating.

Other measures include road hauliers and other passenger and public service vehicles that are dependent on heavy vehicles testing get certificates of exemptions for public services and goods from Driver Vehicle Standard Agency (DVSA). The Bill introduce new route for developers to seek to amend planning restrictions on construction site working hours to temporarily allow extended working hours and extend expiration of certain planning permissions and listed building consents.

This report seeks approval from Cabinet for necessary consents, approvals, pavement licensing conditions, delegated authority and processes for dealing with objections for applications made under the Act for placing tables and chairs outdoors.

Reasons for Proposed Decision:

To be able to receive, consider and determine applications from premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary licensing.

Other Options for Action:

If the Council does not have a process in place to determine applications from premises within the 7-day period stipulated in the new Act then the licence will be automatically deemed to be granted. This is not tenable as the Council would want to be in a position to review and assess applications and if deemed inappropriate refuse Licence.

Consideration was given to requiring the applicants to provide CCTV systems for the external areas however it was felt that it is not reasonable. This is because of the legislative requirements would be too onerous especially given the licences are temporary.

Report:

1. The Secretary of State for Business, Energy and Industrial Strategy Alok Sharman introduced the Business and Planning Bill in The Houses of Commons last month. The Bill includes a range of measures to help businesses to adjust to new ways of working as the country recovers from disruption caused by Covid-19. The measures support the transition from crisis response and lockdown to recovery and getting economy moving. It is intended that the measures support businesses to implement safer ways of working to manage the ongoing risks from Covid-19, make high streets safe by facilitating social distancing to encourage foot fall onto high streets.

2. The Bill has four main areas: amendments to the Consumer Credit Act 1974 for lending under Bounce Back Loans, making it easier for certain premises to seat and serve customers outdoors through changes to licensing Act 2003, temporary changes to planning laws to enable the planning system to continue to operate effectively and to support safe construction following Covid-19 and changes to Heavy Goods Vehicles and Public Service Vehicle licensing to prevent backlog of checks for the Driver and Vehicle Standards Agency.

3. This report deals with the outdoor seating element of the new legislation. At the time of writing of this report the Bill had reached the Committee Stage at the House of Lords for consideration at week beginning 13 July. It is expected that Bill will receive, at the earliest Royal Assent by 21 July 2021. This report seeks approval for the necessary arrangements that need to be made for the Council to be able to deal with licence applications in a timely manner.

4. The proposed Bill is likely to amend the Licensing Act 2003 to allow licence for certain businesses to place tables and chairs on the pavement. It is understood that the

amendments will include maximum 7-day determination period following a 7-day consultation period for any applications in this category. This is significantly less compared to the normal 28-day consultation period followed by 21 days for a Licensing Committee hearing. One of the consequences of this will be the lack of time to consult with the Licensing Committee. It is therefore recommended that the Council's Scheme of Delegation be amended to authorise the Service Director to determine those licensing applications where there are no valid objections, discounting vexatious objections. In the event of valid objections the Service Director is to consult with the Portfolio Holder for determination.

5. Due to the short time for determination and consultation it is recommended that all consultations will be electronic and for this Council this will include publishing all applications on the website, email notification to the Clerks to the Town and Parish Council, Ward Members and other representatives such as Highways, Police, Environmental Officers, Fire Service etc. For this reason, Cabinet are asked to reconsider the proposal for consultations by letter, and agree that, for this temporary period only, and only for pavement licences, letters to all residents within 150m radius of a premises subject to application will not be required.

6. It is recommended that the term of the pavement licenses issued by the Council be as proposed in the Act, up to September 2021. The advantages of having one licence period extending to September 2021 means that the administrative burden on the Licensing team is reduced, the licence fee is more fairly applied over the whole period, particularly as some businesses will be reliant on highway alterations to allow widened footpaths before they will be in a position to apply for the pavement licence. The earliest a pavement licence is likely to be effective is early August 2020, which only leaves a couple of effective 'summer months'; and in any case, the licence period can be reduced to less than September 2021 for particular premises, at the councils discretion.

7. Cabinet is asked to agree approval of standard licence conditions as at Appendix -1 that will be applicable to all businesses operating with the benefit of a Pavement Licence. Additional premises specific conditions will also be applicable, which will include, for example days and hours that the pavement licence is valid and plan and layout of the licensable area.

Resource Implications:

It is the intention of Government to minimise any financial implications for the local authorities from outdoor seating licence applications. It is for this purpose that Government has taken away much of the administrative costs such as producing and placing site notice, consulting for 28 days while securing various consents.

The new Act allows local authorities to make a charge for the pavement licence. It is recommended that the following charges be agreed:

Independent Cafes, restaurants and pubs: Free
Franchised and chain businesses: £100
Any business operating after 20:00: £100

Legal and Governance Implications:

Should issues arise as a result of a pavement licence being issued, officers will have powers to serve an enforcement notice requiring change to operations, works etc, or the Council can

use their powers of revocation to revoke or vary the licence as appropriate.

Safer, Cleaner and Greener Implications:

The Business and Planning Act 2020 will also introduce modifications to the Licensing Act 2003 that allows for the authorisation of off sales for a limited period. Subject to some restrictions, all on sales only premises licences will have 'off sales' added. This will be for a temporary period lasting until 30 September 2021. No application is required, it is an automatic process provided that an on-sales premises licence was in place on the day the Act comes into force and that there has been no 'disqualifying event' in the previous 3 years (e.g. a refusal to grant an off sales; refusal to vary an off sales, removal of off sales by variation or modification). It is understood that all offences under the Licensing Act 2003 remain in place; off sales do not extend the licenced area, they simply allow off sales.

The Council has new state of the art CCTV in Epping High Street, 31 cams from the Civic down to Tesco's, 31 cams on Loughton High Road, 64 Cameras in Debden Broadway and Lower Queens Rd/Queens Road.

Consultation Undertaken:

Chairman and Vice Chairman of the Licensing Committee have been consulted.

Background Papers:

None

Risk Management:

If the Council does not have a process in place for dealing with applications made under the changes proposed in the Business and Planning Bill these applications will be deemed to be granted automatically. This runs the risks of licensees placing chairs and tables outside premises even when it is not safe to do so. This could result in higher risks to customers and members of the public if social distancing parameters are breached.

There could be a reputational risk to the Council if it is not ready to put systems in place to deal with the new legislation.

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided at Appendix-2 to the report.